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S E C R E T SECTION 01 OF 02 THE HAGUE 000490

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DEPARTMENT FOR S/WCI - PROSPER/RICHARD, EUR/SCE -
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SEIDENSTRICKER/MORIN

E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE OF ICTY

TAGS: [PREL](#) [PHUM](#) [BK](#) [HR](#) [SR](#) [NL](#) [ICTY](#)

SUBJECT: ICTY: OTP REQUEST 298 DEMARCHE DELIVERED

REF: SECSTATE 41128

Classified By: Ambassador Sobel per reasons 1.5(b)-(d)

11. (S) Summary: Ambassador Sobel, joined by Deputy Legal Counselor, delivered reftel letter and points February 25 to Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Carla Del Ponte. While arguing that her actions did not amount to a "breach" of the USG's authorization of use of the Mladic documents, Del Ponte nonetheless appeared to understand the seriousness of the message being delivered, committing herself to provide written assurances as described in reftel talking points. Taking the cue from the Ambassador's emphasis that we want to remain supportive of the Office of the Prosecutor (OTP) activities, she said that she hoped that, through use of the documents as "lead and background" information, OTP would be able to obtain the full set of documents from Belgrade or other sources directly. End summary.

12. (S) Ambassador Sobel began the discussion with Chief Prosecutor Del Ponte by emphasizing the seriousness with which the USG took the breach of the Rule 70 conditions placed on the documents provided in response to Request 298. Del Ponte responded that conversations with Embassy Legal Counselor and members of her team had led her to expect the demarche we were about to deliver. She then read the letter aloud so that staff present, Milosevic prosecutor Dermot Groome and senior adviser Jean-Daniel Ruch, could know the letter's contents. After reading the first line -- "This letter and its contents are to be considered protected by Rule 70" -- she laughed and said, "then we cannot talk!" Moving on to the substance of the letter, she argued that "we didn't breach" the Rule 70 authorization. She explained that she was fully aware that the documents could only be used in the Milosevic proceedings, but that discussions with members of her staff led her to believe it would be important to determine whether the judge who ordered Belgrade to produce the Mladic personnel file authorized Belgrade to redact some of the information in it. Her main interest, she said, was to reverse the judge's decision, if she had authorized the redactions, and to obtain from Belgrade the full, unredacted Mladic file. (NB: The judge was a so-called duty judge, unfamiliar with the Milosevic or Mladic cases, named Ines Monica Weinberg de Roca of Argentina.)

13. (S) Continuing her explanation, Del Ponte said that she went to the judge informally and told her that she knew the Mladic file as provided by Belgrade lacked key information showing that Mladic was promoted in the Yugoslav Army (VJ) in 1994 and retired in 2001. Del Ponte asserted emphatically that she did not show the Mladic documents to the judge. (NB: Patrick Lopez-Teres, chief of investigations, had joined Del Ponte in her meeting with Judge Weinberg de Roca and told embassy legal officers subsequently that he and Del Ponte had "formally breached" the Rule 70 authorization when she showed the judge the documents. Embassy legal officers learned from other OTP prosecutors that they had advised her previously that sharing the documents with the judge would amount to a breach of the USG's Rule 70 conditions.) She explained that she simply "used the information" to draw the judge into telling her whether she was aware of the missing information and, if so, whether she had authorized Belgrade to redact the information. Judge Weinberg de Roca, on this basis, said that she had indeed authorized the redactions.

14. (S) Ambassador Sobel noted that the USG had responded to the OTP request in remarkably quick fashion and believed that, had OTP asked in this case, they would probably have received a similarly quick response. While Del Ponte did not explain why she and her staff could not wait to make such a request, she appeared to understand the seriousness with which the USG took the breach its Rule 70 conditions. Following delivery of reftel points, Del Ponte committed to providing the written assurances as requested. The Ambassador emphasized the importance of taking this step, particularly as a vehicle to ensure that the supportive USG relationship with OTP would remain on track.

15. (S) Del Ponte advised that she hoped to file a motion with Judge Weinberg de Roca in an effort to obtain the full Mladic personnel file. She said that OTP would explain that it has

information indicating that the personnel file provided by Belgrade under Weinberg de Roca's order was incomplete in material ways. Deputy Legal Counselor promised to confirm with the Department that such use would be consistent with the still-in-effect authorization of February 14 to use the documents for lead and background purposes. Del Ponte and her staff also are aware of their need to collect the existing copies of the documents and deliver them to the Embassy, where one copy will remain, and to remove the document from OTP's restricted electronic database.

16. (S) Comment: Del Ponte seemed to get the message intended by the letter and demarche. She understands that the USG takes the breach extremely seriously, though her maintenance that the use of the documents did not amount to a Rule 70 violation undercut her ability to express such understanding.

Fundamentally, though, she and her team understand that their main task now is not to debate USG conditions but to find ways to leverage the documents, as lead and background information, into obtaining the documents directly from Belgrade or other sources. Indeed, embassy legal officers understand from an OTP investigator that the documents, even under a lead-and-background use-only restriction, have led OTP to a "gold mine". We look forward in the coming days to learning just what kind of gold mine they have found. End comment.

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